



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52 and 81**

**[EPA-R05-OAR-2012-0464; FRL-9906-41-Region-5]**

**Approval and Promulgation of Air Quality Implementation Plans;  
Wisconsin; Redesignation of the Milwaukee-Racine 2006 24-Hour  
Fine Particle Nonattainment Area to Attainment**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On June 8, 2012, the State of Wisconsin, through the Wisconsin Department of Natural Resources (WDNR) submitted a request for the Environmental Protection Agency (EPA) to redesignate the Milwaukee-Racine fine particle (PM<sub>2.5</sub>) nonattainment area ("Milwaukee-Racine Area" or "Area") to attainment for the 2006 24-hour PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS), and to approve a state implementation plan (SIP) revision containing a maintenance plan for the Area. The Milwaukee-Racine Area is comprised of Milwaukee, Racine and Waukesha Counties. EPA is proposing to grant the state's request to redesignate the Area to attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA's proposed approval involves several additional related actions. EPA is proposing to approve the state's plan for maintaining the 2006 24-hour PM<sub>2.5</sub> NAAQS through 2025. EPA is proposing to approve the ammonia, volatile organic

compounds (VOC), nitrogen oxides (NO<sub>x</sub>), direct PM<sub>2.5</sub>, and sulfur dioxide (SO<sub>2</sub>) inventories submitted by the state as meeting the comprehensive emissions inventory requirement of the Clean Air Act (CAA). Finally, EPA finds adequate and is proposing to approve Wisconsin's NO<sub>x</sub>, direct PM<sub>2.5</sub>, SO<sub>2</sub>, and VOC motor vehicle emission budgets (MVEBs) for 2020 and 2025 for the Milwaukee Area. EPA is also addressing a number of additional issues, including the effects of two decisions of the United States Court of Appeals for the District of Columbia (D.C. Circuit or Court): The Court's August 21, 2012, decision to vacate and remand to EPA the Cross-State Air Pollution Rule (CSAPR); and the Court's January 4, 2013, decision to remand two final rules implementing the 1997 annual PM<sub>2.5</sub> standard.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2012-0464, by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
2. E-mail: [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov).
3. Fax: (312) 408-2279.
4. Mail: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S.

Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. Hand Delivery: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No.

EPA-R05-OAR-2012-0464. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in

the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the SUPPLEMENTARY INFORMATION section of this document.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West

Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Gilberto Alvarez, Environmental Scientist, at (312) 886-6143 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Gilberto Alvarez, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6143, [alvarez.gilberto@epa.gov](mailto:alvarez.gilberto@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Should I Consider as I Prepare My Comments for EPA?
- II. What Is the Background for the Proposal?
- III. What Are the Criteria for Redesignation to Attainment?
- IV. What Is EPA's Analysis of the State's Request?
  - A. Attainment Determination and Redesignation
    - 1. The Area Has Attained the 2006 24 PM<sub>2.5</sub> NAAQS.  
(Section 107(d)(3)(E)(i))
    - 2. The Area Has Met All Applicable Requirements under Section 110 and part D; and the Area Has a Fully Approved SIP Under Section 110(k) of the CAA.

(Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))

3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting from Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions. (Section 107(d)(3)(E)(iii))

4. The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA. (Section 107(d)(3)(E)(iv))

B. Ammonia and VOC Comprehensive Emissions Inventories

C. Wisconsin's MVEBs

1. How Are MVEBs Developed?

2. What Are the MVEBs For the Milwaukee-Racine Area?

V. Summary of Proposed Actions

VI. Statutory and Executive Order Reviews

**I. What Should I Consider as I Prepare My Comments for EPA?**

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date, and page number).

2. Follow directions - EPA may ask you to respond to specific questions or organize comments by referencing a Code of

Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

## **II. What Is the Background for the Proposal?**

Fine particulate pollution can be emitted directly from a source (direct PM<sub>2.5</sub>) or formed secondarily through chemical reactions in the atmosphere involving precursor pollutants emitted from a variety of sources. Sulfates are a type of secondary particulate formed from SO<sub>2</sub> emissions from power plants and industrial facilities. Nitrates, another common type of secondary particulate, are formed from combustion emissions of

NO<sub>x</sub> from power plants, mobile sources and other combustion sources.

The first air quality standards for PM<sub>2.5</sub> were promulgated on July 18, 1997, at 62 FR 38652. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (µg/m<sup>3</sup>) of ambient air, based on a three-year average of annual mean PM<sub>2.5</sub> concentrations at each monitoring site. In the same rulemaking, EPA promulgated a 24-hour PM<sub>2.5</sub> standard at 65 µg/m<sup>3</sup>, based on a three-year average of the 98<sup>th</sup> percentile of 24-hour PM<sub>2.5</sub> concentrations at each monitoring site.

On October 17, 2006, at 71 FR 61144, EPA retained the annual PM<sub>2.5</sub> standard at 15 µg/m<sup>3</sup> (2006 annual PM<sub>2.5</sub> standard), but revised the 24-hour standard to 35 µg/m<sup>3</sup>, based again on the three-year average of the 98<sup>th</sup> percentile of 24-hour PM<sub>2.5</sub> concentrations at each monitor.

On November 13, 2009, at 74 FR 58688, EPA published air quality area designations for the 2006 24-hour PM<sub>2.5</sub> standard. In that rulemaking, EPA designated the Milwaukee-Racine Area as nonattainment for the 2006 24-hour PM<sub>2.5</sub> standard and defined the area to include Milwaukee, Racine and Kenosha Counties.

In response to legal challenges of the 2006 annual PM<sub>2.5</sub> standard, the D.C. Circuit remanded this standard to EPA for further consideration. See *American Farm Bureau Federation and*



*National Pork Producers Council, et al. v. EPA*, 559 F.3d 512 (D.C. Cir. 2009). On December 14, 2012, EPA finalized a rule revising the PM<sub>2.5</sub> annual standard to 12 µg/m<sup>3</sup> based on current scientific evidence regarding the protection of public health. EPA is not addressing the 2012 annual PM<sub>2.5</sub> standard in this proposal.

On April 24, 2012, and December 28, 2012, EPA proposed and repropoed, respectively, to determine that the Area was in attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS (77 FR 24436 and 77 FR 76427), based on certified ambient monitoring data for the 2008-2010 monitoring period.

On June 8, 2012, the Wisconsin Department of Natural Resources (WDNR), submitted a request for EPA to redesignate the Milwaukee-Racine Area to attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS, and for EPA approval of the SIP revision containing an emissions inventory and a maintenance plan for the area.

On May 30, 2013, WDNR submitted ammonia and VOC emissions inventories to supplement previously submitted emissions inventories.

In this proposed redesignation, EPA takes into account two decisions of the D.C. Circuit. In the first of the two Court decisions, the D.C. Circuit, on August 21, 2012, in *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012),

vacated and remanded CSAPR and ordered EPA to continue administering the Clean Air Interstate Rule (CAIR) "pending . . . development of a valid replacement." *EME Homer City* at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. In the second decision, on January 4, 2013, in *Natural Resources Defense Council v. EPA*, the D.C. Circuit remanded to EPA the "Final Clean Air Fine Particle Implementation Rule" (72 FR 20586, April 25, 2007) and the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)" final rule (73 FR 28321, May 16, 2008), 706 F.3d 428 (D.C. Cir. 2013).

### **III. What Are the Criteria for Redesignation to Attainment?**

The CAA sets forth the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that: (1) the Administrator determines that the area has attained the applicable NAAQS based on current air quality data; (2) the Administrator has fully approved an applicable SIP for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from implementation of the applicable SIP, Federal air pollution control regulations and other permanent and enforceable emission

reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

#### **IV. What is EPA's Analysis of the State's Request?**

##### **A. Attainment Determination and Redesignation**

As noted above, on April 24, 2012, at 77 FR 24436, EPA proposed to determine that the Milwaukee-Racine Area attained the 2006 24-hour  $PM_{2.5}$  standard by the applicable attainment date. EPA is here updating and elaborating upon that proposal. We received comments and we are updating the information, based on those comments, within this proposed redesignation. EPA is proposing to determine that the area continues to attain the 2006 24-hour  $PM_{2.5}$  standard with certified 2010-2012 monitoring data. EPA is also proposing to approve Wisconsin's maintenance plan for the area and to determine that the area has met all other applicable redesignation criteria under CAA section 107(d)(3)(E). The basis for EPA's proposed approval of the redesignation request is as follows:

##### **1. The Area Has Attained the 2006 24-Hour $PM_{2.5}$ NAAQS.**

###### **(Section 107(d)(3)(E)(i))**

In this action EPA is proposing to redesignate the

Milwaukee-Racine Area as having attained the 2006 24-hour  $PM_{2.5}$  NAAQS based on quality-assured, certified data for the 2010-2012 monitoring period. Data available for 2013 indicate that the area continues to attain the standard. EPA's determination that an area has attained the 2006 24-hour  $PM_{2.5}$  NAAQS is made in accordance with 40 CFR 50.13 and part 50, appendix N, based on three consecutive calendar years of complete quality-assured air quality monitoring data. For an area to attain the 2006 24-hour  $PM_{2.5}$  standard, the three-year average of the 98<sup>th</sup> percentile 24-hour concentrations must not exceed 35  $\mu g/m^3$  at all relevant monitoring sites in the subject area. Under 40 CFR part 50, appendix N 4.2(a), a year of 24-Hour  $PM_{2.5}$  data meets completeness requirements when at least 75 percent of the scheduled sampling days for each quarter have valid data. Section 4.2(b) provides further that "The use of less than complete data is subject to the approval of EPA which may consider factors such as monitoring site closures/moves, monitoring diligence, and nearby concentrations in determining whether to use such data for comparisons to the NAAQS."

The state's redesignation request for the Milwaukee-Racine area includes monitoring data for the 2008-2010 time period. In addition, certified monitoring data are also now available for the 2009-2011, 2010-2012 and 2013 time periods. In addition, on

January 23, 2013, WDNR submitted draft 2013 data for the area. Table 1, below, provides a summary of the PM<sub>2.5</sub> 24-hour air quality monitoring data for the years 2008-2012. Table 2, below, provides the design values for the 2008-2010, 2009-2011 and 2010-2012 (through mid-November) time periods. Exceedances in the Milwaukee area generally occur in the first quarter of the year, so that the data that are available for 2013 are likely to be a good indication of air quality for the full year.

**Table 1. 98<sup>th</sup> Percentile 24-Hour PM<sub>2.5</sub> Concentrations for the Milwaukee-Racine Area (µg/m<sup>3</sup>)**

Site Name	Monitor	98 <sup>th</sup> Percentile 24-hour Concentrations					
		2008	2009	2010	2011	2012	2013
Milw-DNR SERHQ	550790026	27.5	39.0	32.6	21.3	24.6	19.0
Waukesha	551330027	29.9	32.0	35.9	25.3	20.9	23.6
Milw-16 <sup>th</sup> CHC	550790010	27.3	39.1	30.9	27.0	30.4	23.7
Milw-FAA/College Ave.	550790058	**	26.5*	35.3*	25.4*	27.3	19.2
Virginia Street	550790043	27.4	41.7	**	**	**	**
Wells Street	550790099	29.0	40.3	**	**	30.2	19.7

2013 data are complete through mid-November

\* Indicates incomplete data.

\*\* Indicates no data due to monitor not operating.

**Table 2. 2006 24-hour PM<sub>2.5</sub> Standard Design Values for the Milwaukee-Racine Area (µg/m<sup>3</sup>)**

Site Name	Monitor	2008-2010	2009-2011	2010-2012
Milw-DNR SERHQ	550790026	33	31	26
Waukesha	551330027	33	31	27
Milw-16 <sup>th</sup> CHC	550790010	32	32	29
Milw- FAA/College Ave.	550790058	31*	29*	29*
Virginia Street	550790043	35/34**	***	***
Wells Street	550790099	35/34**	***	***

\* Indicates invalid three-year averages due to missing data

\*\* First value is computed from an incomplete set of monitoring data; second value also considers imputed values

\*\*\* No averages calculated because data were missing from one or more years

The data in Tables 1 and 2 show that all relevant PM<sub>2.5</sub> monitors in the Milwaukee-Racine Area have recorded PM<sub>2.5</sub> concentrations attaining the 2006 24-hour PM<sub>2.5</sub> NAAQS during the 2008-2010, 2009-2011, 2010-2012 and 2013 time periods (no violation of the 2006 24-hour PM<sub>2.5</sub> NAAQS has been recorded at any monitoring site). As demonstrated in Table 1, the data for 2013 through mid-November continue to support a final determination of attainment of the 24-hour PM<sub>2.5</sub> NAAQS for the Milwaukee area. However, because the area experienced data completeness issues due to the shutdown of two monitors (Virginia Street, 550790043 and Wells Street, 5507900099, respectively) in 2010, EPA has evaluated whether the data may still be used, pursuant to the provisions of 50 CFR Appendix N section 4.2(b). EPA conducted an analysis of the data, deriving

the concentrations that might have been expected at the shutdown monitoring sites during the shutdown period, based on observed concentrations at nearby sites, as explained below.

Aside from Virginia and Wells monitors, EPA notes that the design value for the College Avenue monitor in table 2 is based on incomplete data. However, this is not the design value monitor (i.e., it is not the monitor that had the highest value at the time of designation) for the area and a comparison of the values from the remaining monitors within the nonattainment area indicate that those values are reflective of values that one would expect at College Avenue, which are all below the 2006 24-hour PM<sub>2.5</sub> NAAQS. As shown in Table 1, the data continue to show a decline in concentrations.

On April 24, 2012, and December 28, 2012, EPA proposed and repropoed, respectively, to determine that the area was in attainment (77 FR 24436 and 77 FR 76427), based on certified ambient monitoring data for the 2008-2010 monitoring period. EPA is here updating and elaborating upon that proposal. We received comments and we are updating the information, based on those comments, within this proposed redesignation.

EPA received two comments from one commenter, Midwest Environmental Defense Center, on our April 24, 2012, proposed rule. The first comment objected to the EPA's use of a

statistical analysis to impute a design value for the Wells Street monitor (Site Number 550790099), which did not record data during 2010 and 2011, and which had previously recorded data showing nonattainment. The commenter contended that EPA erred in substituting a design value for this monitor and that EPA's analysis does not establish a direct correlation between the shut down monitors and a nearby operating monitor. On December 14, 2011, EPA requested the restart of the Wells Street monitor (Site Number 550790099). The monitor restarted operation on January 1, 2012, and it has been recording data since that time. The state was diligent in restarting the monitor in consultation with EPA. Data available to date for this monitor site through 2013 are consistent with continued attainment. Data for all four quarters of 2012 is complete and 2013 data has 3 complete quarters.

EPA relied on the data imputation technique because two of the monitors were shut down (Site Numbers 550790043 and 550790099) and did not record data during 2010. As discussed in the proposal, EPA relied on this statistical analysis technique because ... "In situations like those in Milwaukee, where there are missing or incomplete data due to monitor shutdown or other factors, EPA believes that it is often appropriate to use historical data along with statistical techniques to impute



missing data, use those imputed data to estimate the three-year design value that would likely have occurred if complete data had been obtained, and thereby determine if the monitor in question would likely have met the NAAQS." (77 FR 24436)

The commenter stated that we incorrectly implied "... that the compared monitors recorded similar data, when in truth, there is not a direct correlation between the data." EPA disagrees that there is not enough correlation between the shut down monitor site and the comparison monitor site. In fact, all four monitoring sites in the nonattainment area correlate very well with the replaced monitor. Wisconsin has provided EPA with an analysis comparing the correlations between the shut down monitor to the other four monitors within the nonattainment area, using data from January 1, 2012, through April 9, 2012, when all monitors collected data. The correlations from that analysis are summarized in Table 3.

EPA understands that the publicly available data we relied upon for our imputation is technically listed as "invalid", due to the shutdown of several monitors, resulting in incomplete data. However, section 4.2(b) provides that "The use of less than complete data is subject to the approval of EPA which may consider factors such as monitoring site closures/moves, monitoring diligence, and nearby concentrations in determining

whether to use such data for comparisons to the NAAQS.

Therefore, based upon our statistical analysis, for the purposes of this redesignation, we believe all the monitors are meeting the 2006 24-hour PM<sub>2.5</sub> NAAQS. In addition, Wisconsin restarted one of the shutdown monitors, and data from 2012 and the available data from 2013 for this site show concentrations well below the standard, and these data show that concentrations at the site continue to be well correlated with concentrations at the other monitoring site from which EPA estimated imputed values for 2010. Other data available to date from 2013 and included in Table 1 are also consistent with continued attainment.

**Table 3. Correlations Analysis**

Site Name	Site Number	Correlation Factor
Milw-DNR SERHQ	550790026	0.997
Waukesha	551330027	0.919
Milw-16 <sup>th</sup> CHC	550790010	0.992
Milw-FAA/College Ave.	550790058	0.997

Moreover, in order to account for the uncertainty inherent within the analysis, EPA used another statistical technique to account for the variability in the data from the original site as well as the data from the correlated comparison monitors. The statistical analysis, known as "bootstrapping" was developed by the Office of Air Quality Planning and Standards to aid in

predicting annual  $PM_{2.5}$  design values in areas which did not meet specific data completeness requirements. A more detailed description of the bootstrapping analysis can be found within the technical support document to our April 24, 2012, notice proposing approval of a determination of attainment (77 FR 24436). In summary, a series of mathematical equations using observations yields linear regression to relate the concentrations from the shutdown sites to a base site containing 2010 data.

The results of that analysis provided EPA with further evidence to support a final determination of attainment of the 24-hour  $PM_{2.5}$  NAAQS for the Milwaukee area.

EPA's use of these data analysis techniques to address incomplete data in making attainment determinations for the  $PM_{2.5}$  NAAQS is well established. see 75 FR 45076 (August 2, 2010) (New York-NJ-CT 1997 annual  $PM_{2.5}$  NAAQS) and 76 FR 27290 (May 11, 2011) Huntington-Ashland (OH,WV,KY) 1997 annual  $PM_{2.5}$  NAAQS.

Therefore, pursuant to 50 CFR Appendix N, section 4.2(b), EPA is expressly approving the use of less than complete data after considering relevant factors. These include site closures and moves, monitoring diligence, nearby concentrations and monitor correlations, as well as additional complete data

acquired in 2012 and 2013 that show continued attainment in the area.

**2. The Area Has Met All Applicable Requirements under Section 110 and Part D; and the Area Has a Fully Approved SIP Under Section 110(k). (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))**

We have determined that Wisconsin's SIP meets all applicable SIP requirements for purposes of redesignation for the Milwaukee-Racine Area under section 110 of the CAA (general SIP requirements) and all SIP requirements currently applicable for purposes of redesignation under part D of title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, with the exception of the emissions inventory under section 172(c)(3), we have approved all applicable requirements of the Wisconsin SIP for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). As discussed below, in this action EPA is proposing to approve Wisconsin's 2006 and 2010 emissions inventories as meeting the section 172(c)(3) comprehensive emissions inventory requirement.

In making these determinations, we have ascertained which SIP requirements are applicable to the area for purposes of redesignation, and have determined that there are SIP measures meeting those requirements and that they are fully approved

under section 110(k) of the CAA.

**a. The Milwaukee-Racine Area Has Met All Applicable  
Requirements for Purposes of Redesignation under  
Section 110 and Part D of the CAA**

**i. Section 110 General SIP Requirements**

Section 110(a) of title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a state must have been adopted by the state after reasonable public notice and hearing, and, among other things, must: (1) include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor ambient air quality; (3) provide for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; (4) include provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, New Source Review (NSR) permit programs; (5) include criteria for stationary source emission control measures, monitoring, and reporting; (6) include provisions for air quality modeling; and (7) provide for public and local agency participation in planning and

emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. EPA holds that the requirements linked with a particular nonattainment area's designation are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we conclude that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. Only the section 110 and part D requirements that are linked with a particular area's designation are the relevant measures that we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as

well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174-53176, October 10, 1996) and (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed the Wisconsin SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent these requirements are applicable for purposes of redesignation. EPA has previously approved provisions of Wisconsin's SIP addressing section 110 requirements, including provisions addressing particulate matter, at 40 CFR 52.1870. On January 24, 2011, and June 29, 2012, Wisconsin submitted "infrastructure SIP" elements required by section 110(a)(2) of the CAA. EPA approved elements of Wisconsin's submittals on October 29, 2012, at 77 FR 65478. The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the PM<sub>2.5</sub> nonattainment status of the Milwaukee-Racine Area. Therefore, EPA believes that these SIP requirements are

not applicable for purposes of review of the state's PM<sub>2.5</sub> redesignation requests.

**ii. Part D Requirements**

EPA is proposing to determine that, upon approval of the comprehensive emissions inventories discussed in section IV.B. of this rulemaking, the Wisconsin SIP will meet the applicable SIP requirements for the Milwaukee-Racine Area applicable for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172-176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 4 of part D, found in sections 185-190 of the CAA, provides more specific requirements for particulate matter nonattainment areas.

**(1) Subpart 1**

**(a) Section 172 Requirements**

For purposes of evaluating these redesignation requests, the applicable section 172 SIP requirements for the Milwaukee-Racine Area are contained in sections 172(c)(1)-(9) of the CAA. A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all Reasonably



Available Control Measures (RACM) as expeditiously as practicable and to provide for attainment of the primary NAAQS (health-based NAAQS). EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Because attainment has been reached in the Milwaukee-Racine Area, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard until redesignation is finalized. See 40 CFR 51.1004(c).

The Reasonable Further Progress (RFP) requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the Milwaukee-Racine Area is monitoring attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS. *Id.* The requirement to submit the section 172(c)(9) contingency measures is similarly not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. Wisconsin submitted 2006 emissions inventories for direct PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub> and VOC along with its redesignation

request and supplemented the inventories with 2007 ammonia emissions on May 30, 2013. As discussed below in section IV.B., EPA is proposing to approve the emission inventories submitted by Wisconsin as meeting the section 172(c)(3) emissions inventory requirement for the Milwaukee-Racine Area.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA approved Wisconsin's current NSR program on January 18, 1995 (60 FR 3538). Nonetheless, since PSD requirements will apply after redesignation, the area need not have a fully-approved NSR program for purposes of redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment" (Nichols memorandum). Wisconsin has demonstrated that the Milwaukee-Racine Area will be able to maintain the standard without part D NSR in effect; therefore, the state need not have a fully approved part D NSR program prior to approval

of the redesignation request. The state's PSD program will become effective in the Milwaukee-Racine Area upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467-12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469-20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834-31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we find that the Wisconsin SIP meets the section 110(a)(2) requirements applicable for purposes of redesignation.

**(b) Section 176 Conformity Requirements**

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded, or approved under title 23 of the U.S. Code and the Federal Transit Act

(transportation conformity) as well as to all other Federally-supported or funded projects (general conformity).

Section 176(c) of the CAA was amended by provisions contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which was signed into law on August 10, 2005, (Public Law 109-59). Among the changes Congress made to this section of the CAA were streamlined requirements for state transportation conformity SIPs. State transportation conformity regulations must be consistent with Federal conformity regulations and address three specific requirements related to consultation, enforcement and enforceability.

EPA interprets the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment, it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. *See Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this

interpretation. *See also* 60 FR 62748, 62749–62750 (Dec. 7, 1995) (Tampa, Florida). EPA approved Wisconsin's general and transportation conformity SIPs on July 29, 1996, (61 FR 39329) and August 27, 1996, (61 FR 43970), respectively. Wisconsin is in the process of updating its approved transportation conformity SIP, and EPA will review its provisions when they are submitted.

Wisconsin has submitted onroad MVEBs for the Milwaukee-Racine Area of 2.33 tons per winter day<sup>1</sup> (tpwd) and 2.16 tpwd direct PM<sub>2.5</sub> and 32.62 tpwd and 28.69 tpwd NO<sub>x</sub> for the years 2020 and 2025, respectively. The area must use the MVEBs from the maintenance plan in any conformity determination that is made on or after the effective date of the adequacy finding and maintenance plan approval.

**(2) Effect of the January 4, 2013, D.C. Circuit Decision  
Regarding PM<sub>2.5</sub> Implementation under Subpart 4**

**(a) Background**

---

<sup>1</sup> Wisconsin's nonattainment violations occurred for 24-hour average time periods. Therefore, it was necessary to construct emissions inventories for a time period that is most associated with elevated levels of 24-hour PM<sub>2.5</sub> concentrations. A Wisconsin-specific study identified the meteorological winter months of December, January, January and February as having both the highest monthly average PM<sub>2.5</sub> concentrations and the highest monthly percentage of site-days with 24-hour concentrations greater than 30 µg/m<sup>3</sup>. Accordingly, Wisconsin designed and constructed emission inventories for this PM<sub>2.5</sub> redesignation request to focus on pollution-related activity levels during the winter months (more specifically – for an average January weekday). Thus, emissions inventory values are referenced as tons per winter day (tpwd).

As discussed above, on January 4, 2013, in *Natural Resources Defense Council v. EPA*, the D.C. Circuit remanded to EPA the "Final Clean Air Fine Particle Implementation Rule" (72 FR 20586, April 25, 2007) and the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)" final rule (73 FR 28321, May 16, 2008) (collectively, "1997 PM<sub>2.5</sub> Implementation Rule"). 706 F.3d 428 (D.C. Cir. 2013). The Court found that EPA erred in implementing the 1997 annual PM<sub>2.5</sub> NAAQS pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than the particulate-matter-specific provisions of subpart 4 of part D of title I.

Although the Court's ruling did not directly address the 2006 24-hour PM<sub>2.5</sub> standard, EPA is taking into account the Court's position on subpart 4 and the 1997 annual PM<sub>2.5</sub> standard in evaluating redesignations for the 2006 standard.

**(b) Proposal on This Issue**

EPA is proposing to determine that the Court's January 4, 2013, decision does not prevent EPA from redesignating the Milwaukee-Racine Area to attainment. Even in light of the Court's decision, redesignation for this area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. EPA's longstanding

interpretation of the redesignation provisions of the CAA hold that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Even if EPA applies the subpart 4 requirements to the Milwaukee-Racine redesignation request and disregards the provisions of its 1997 PM<sub>2.5</sub> implementation rule recently remanded by the Court, the state's request for redesignation of this area still qualifies for approval. EPA's discussion takes into account the effect of the Court's ruling on the area's maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

**(i) Applicable Requirements for Purposes of Evaluating the Redesignation Request**

With respect to the 1997 PM<sub>2.5</sub> Implementation Rule and the voluntary remand of the 2006 PM<sub>2.5</sub> implementation rule, the Court's January 4, 2013, ruling rejected EPA's reasons for implementing the PM<sub>2.5</sub> NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the 1997 PM<sub>2.5</sub> NAAQS and 2006 PM<sub>2.5</sub> NAAQS under subpart 4 of part D of the CAA, in addition to subpart 1. For the purposes of evaluating Wisconsin's redesignation request for the area, to the extent

that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not "applicable" for the purposes of CAA section 107(d)(3)(E), and, thus, EPA is not required to consider subpart 4 requirements with respect to the Milwaukee-Racine redesignation. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are "applicable" and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. See "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992, (Calcagni memorandum). See also "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993, (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465-66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424-27, May 12, 2003); *Sierra*



*Club v. EPA*, 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club's view that the meaning of "applicable" under the statute is "whatever should have been in the plan at the time of attainment rather than whatever actually was in the plan and already implemented or due at the time of attainment").<sup>2</sup> In this case, at the time that Wisconsin submitted its redesignation request, requirements under subpart 4 were not due, and indeed, were not yet known to apply, as the state's submittal was prior to the D.C. Circuit's decision.

EPA's view that, for purposes of evaluating the Milwaukee-Racine redesignation, the subpart 4 requirements were not due at the time the state submitted the redesignation request is in keeping with the EPA's interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the D.C. Circuit's decision in *South Coast Air Quality Mgmt. Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). In *South Coast*, the Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was

---

<sup>2</sup> Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA.

required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that "applicable requirements", for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. See, e.g., Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those actions, EPA therefore did not consider subpart 2 requirements to be "applicable" for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E).

EPA's interpretation derives from the provisions of CAA Section 107(d)(3). Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet "all requirements 'applicable' to the area under section 110 and part D". Section 107(d)(3)(E)(ii) provides that the EPA must have fully approved the "applicable" SIP for the area seeking redesignation. These two sections read together support EPA's interpretation of "applicable" as only those requirements that came due prior to submission of a complete redesignation request. First, holding

states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18 month deadline Congress set for EPA action in section 107(d)(3)(D). If "applicable requirements" were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18 month timeframe provided by the CAA for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for

purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

In the context of this redesignation, the timing and nature of the Court's January 4, 2013, decision in *NRDC v. EPA* compound the consequences of imposing requirements that come due after the redesignation request is submitted. The state submitted its redesignation request on June 8, 2012, but the Court did not issue its decision remanding EPA's 1997 PM<sub>2.5</sub> implementation rule and the voluntary remand of the 2006 PM<sub>2.5</sub> implementation rule concerning the applicability of the provisions of subpart 4 until January 2013.

To require the state's fully-completed and pending redesignation request to comply now with requirements of subpart 4 that the Court announced only in its January, 2013, decision on the 1997 PM<sub>2.5</sub> Implementation rule, would be to give retroactive effect to such requirements when the state had no

notice that it was required to meet them. The D.C. Circuit recognized the inequity of this type of retroactive impact in *Sierra Club v. Whitman*, 285 F.3d 63 (D.C. Cir. 2002),<sup>3</sup> where it upheld the District Court's ruling refusing to make retroactive EPA's determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the Court to make EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The Court rejected this view, stating that applying it "would likely impose large costs on states, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time." *Id.* at 68. Similarly, it would be unreasonable to penalize Wisconsin by rejecting its redesignation request for an area that is already attaining the 2006 24-hour PM<sub>2.5</sub> standard and that met all applicable requirements known to be in effect at the time of the request. For EPA now to reject the redesignation request solely because the state did not expressly address subpart 4 requirements of

---

<sup>3</sup>*Sierra Club v. Whitman* was discussed and distinguished in a recent D.C. Circuit decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass'n v. EPA*. 630 F.3d 145, 163 (D.C. Cir. 2010), rehearing denied 643 F.3d 958 (D.C. Cir. 2011), cert denied 132 S. Ct. 571 (2011).

which it had no notice, would inflict the same unfairness condemned by the Court in *Sierra Club v. Whitman*.

**(ii) Subpart 4 Requirements and Wisconsin's Redesignation Request**

Even if EPA were to take the view that the Court's January 4, 2013, decision requires that, in the context of a pending redesignation for the 2006 PM<sub>2.5</sub> standard, subpart 4 requirements were due and in effect at the time the state submitted its redesignation request, EPA finds that the Milwaukee-Racine Area still qualifies for redesignation to attainment. As explained below, EPA believes that the redesignation request for the Milwaukee-Racine Area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of redesignating the area to attainment.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Milwaukee-Racine Area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. See Section 172(c). Subpart 4 itself contains

specific planning and scheduling requirements for PM<sub>10</sub><sup>4</sup> nonattainment areas, and, under the Court's January 4, 2013, decision in *NRDC v. EPA*, these same statutory requirements also apply for PM<sub>2.5</sub> nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. See, "State Implementation Plans; General Preamble for the Implementation of title I of the Clear Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992) (the "General Preamble"). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent "subsumed by, or integrally related to, the more specific PM-10 requirements." 57 FR 13538 (April 16, 1992). The subpart 1 requirements include, among other things, provisions for attainment demonstrations, RACM, RFP, emissions inventories, and contingency measures.

For the purposes of this redesignation, in order to identify any additional requirements that would apply under subpart 4, we are considering the Milwaukee-Racine Area to be a "moderate" PM<sub>2.5</sub> nonattainment area. Under section 188 of the

---

<sup>4</sup> PM<sub>10</sub> refers to particulates nominally 10 micrometers in diameter or smaller.

CAA, all areas designated nonattainment under subpart 4 would initially be classified by operation of law as "moderate" nonattainment areas, and would remain moderate nonattainment areas unless and until EPA reclassifies the areas as "serious" nonattainment areas. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) an approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to  $PM_{10}$ , without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those



contained in subpart 1.<sup>5</sup> In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment new source review program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a PSD program after redesignation. A detailed rationale for this view is described in the Nichols memorandum. See also rulemakings for Detroit, Michigan (60 FR 12467-12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469-20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834-31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,<sup>6</sup> when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the PM<sub>2.5</sub> standard is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has consistently interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that:

---

<sup>5</sup> The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed below.

<sup>6</sup>i.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the state will make RFP towards attainment will, therefore, have no meaning at that point.

"General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990"; (57 FR 13498, 13564, April 16, 1992).

The General Preamble also explained that:

[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.

*Id.*

EPA similarly stated in its 1992 Calcagni memorandum that, "The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations

because they only have meaning for areas not attaining the standard."

It is evident that even if we were to consider the Court's January 4, 2013, decision in *NRDC v. EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively<sup>7</sup> and thus are now past due, those requirements do not apply to an area that is attaining the 2006 24-hour PM<sub>2.5</sub> standard, for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA's authority to interpret "applicable requirements" in the redesignation context. See *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligation to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the standard. EPA's prior "Clean Data Policy" rulemakings for the PM<sub>10</sub> NAAQS, also governed

---

<sup>7</sup> As EPA has explained above, we do not believe that the Court's January 4, 2013 decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club v. Whitman*, *supra*.

by the requirements of subpart 4, explain EPA's reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. See "Determination of Attainment for Coso Junction Nonattainment Area," (75 FR 27944, May 19, 2010). See also Coso Junction proposed PM<sub>10</sub> redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954-55, July 19, 2006; and 71 FR 63641, 63643-47 October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

Elsewhere in this notice, EPA proposes to determine that the area has attained the 2006 24-hour PM<sub>2.5</sub> standard, because that the area meets the attainment-related plan requirements of subparts 1 and 4.

Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c)(1) and section 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating the redesignation request.

**(iii) Subpart 4 and Control of PM<sub>2.5</sub> Precursors**

The D.C. Circuit in *NRDC v. EPA* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. EPA, in this section addresses the Court's opinion with respect to PM<sub>2.5</sub> precursors. While past implementation of subpart 4 for PM<sub>10</sub> has allowed for control of PM<sub>10</sub> precursors such as NO<sub>x</sub> from major stationary, mobile, and area sources in order to attain the standard as expeditiously as practicable, CAA section 189(e) specifically provides that control requirements for major stationary sources of direct PM<sub>10</sub> shall also apply to PM<sub>10</sub> precursors from those sources, except where EPA determines that major stationary sources of such precursors "do not contribute significantly to PM<sub>10</sub> levels which exceed the standard in the area."

EPA's 1997 PM<sub>2.5</sub> implementation rule, remanded by the D.C. Circuit, contained rebuttable presumptions concerning certain PM<sub>2.5</sub> precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was "not required to address VOC [and ammonia] as . . . PM<sub>2.5</sub> attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the state for control measures." EPA intended

these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing PM<sub>2.5</sub> concentrations. EPA also left open the possibility for such regulation of VOC and ammonia in specific areas where that was necessary.

The Court in its January 4, 2013, decision made reference to both section 189(e) and 40 CFR 51.1002, and stated that, "In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not PM<sub>2.5</sub> precursors, as subpart 4 expressly governs precursor presumptions." *NRDC v. EPA*, at 27, n.10.

Elsewhere in its opinion, however, the Court observed: Ammonia is a precursor to fine particulate matter, making it a precursor to both PM<sub>2.5</sub> and PM<sub>10</sub>. For a PM<sub>10</sub> nonattainment area governed by subpart 4, a precursor is presumptively regulated. See 42 U.S.C. § 7513a(e) [section 189(e)].

*Id.* at 21, n.7. For a number of reasons, EPA believes that its proposed redesignation of the Milwaukee-Racine Area is consistent with the Court's decision on this aspect of

subpart 4. First, while the Court, citing section 189(e), stated that "for a  $PM_{10}$  area governed by subpart 4, a precursor is 'presumptively regulated,'" the Court expressly declined to decide the specific challenge to EPA's 1997  $PM_{2.5}$  implementation rule provisions regarding ammonia and VOC as precursors. The Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular  $PM_{2.5}$  nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the implementation rule's rebuttable presumptions regarding ammonia and VOC as  $PM_{2.5}$  precursors (and any similar provisions reflected in the guidance for the 2006  $PM_{2.5}$  standard), the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of the Milwaukee-Racine Area, EPA believes that proposing redesignation of the Milwaukee-Racine area for the 2006 24-hour  $PM_{2.5}$  standard is

consistent with section 189(e) of the CAA. The Milwaukee-Racine Area has attained the standard without any specific additional controls of ammonia emissions from any sources in the area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which require, with important exceptions, control requirements for major stationary sources of  $PM_{10}$  precursors.<sup>8</sup> Under subpart 1 and EPA's prior implementation rule, all major stationary sources of  $PM_{2.5}$  precursors were subject to regulation, with the exception of ammonia and VOC. Thus we must address here whether additional controls of ammonia and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the area for the 2006 24-hour  $PM_{2.5}$  standard. As explained below, we do not believe that any additional controls of ammonia and VOC are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). See 57 FR 13538-13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOC under other CAA

---

<sup>8</sup> Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.



requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e). 57 FR 13542. EPA proposes to determine that the SIP has met the provisions of section 189(e) with respect to ammonia and VOCs as precursors. This proposed determination is based on our findings that: (1) the Milwaukee-Racine Area contains no major stationary sources of ammonia, and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.<sup>9</sup> In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the area, which is attaining the 2006 24-hour  $PM_{2.5}$  standard, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to  $PM_{2.5}$  levels exceeding the 2006 24-hour  $PM_{2.5}$  standard in the Milwaukee-Racine Area. See 57 FR 13539-42.

EPA's 1997  $PM_{2.5}$  implementation rule provisions in 40 CFR 51.1002 were not directed at evaluation of  $PM_{2.5}$  precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the

---

<sup>9</sup>The Milwaukee-Racine Area has reduced VOC emissions through the implementation of various control programs including VOC Reasonably Available Control Technology regulations and various onroad and nonroad motor vehicle control programs.

2006 24-hour PM<sub>2.5</sub> NAAQS. By contrast, redesignation to attainment primarily requires the area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the Court's January 4, 2013, decision as calling for "presumptive regulation" of ammonia and VOC for PM<sub>2.5</sub> under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring Wisconsin to address precursors differently than they have already would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM<sub>10</sub> contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, *i.e.*, states may determine that only certain precursors need be regulated for attainment and control purposes.<sup>10</sup> Courts have upheld this

---

<sup>10</sup>See, *e.g.*, "Approval and Promulgation of Implementation Plans for California - San Joaquin Valley PM-10 Nonattainment Area;

approach to the requirements of subpart 4 for  $PM_{10}$ .<sup>11</sup> EPA believes that application of this approach to  $PM_{2.5}$  precursors under subpart 4 is reasonable. Because the Milwaukee-Racine Area has already attained the 2006 24-hour  $PM_{2.5}$  NAAQS with its current approach to regulation of  $PM_{2.5}$  precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the Court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of Wisconsin's request for redesignation of the Milwaukee-Racine Area. In the context of a redesignation, the area has shown that it has attained the standard. Moreover, the state has shown and EPA has proposed to determine that attainment in this area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment. It follows logically that no

---

Serious Area Plan for Nonattainment of the 24-hour and Annual  $PM_{10}$  Standards," 69 FR 30006 (May 26, 2004) (approving a  $PM_{10}$  attainment plan that impose controls on direct  $PM_{10}$  and  $NO_x$  emissions and did not impose controls on  $SO_2$ , VOC, or ammonia emissions).

<sup>11</sup>See, e.g., *Assoc. of Irrigated Residents v. EPA et al.*, 423 F.3d 989 (9<sup>th</sup> Cir. 2005).

further control of additional precursors is necessary.

Accordingly, EPA does not view the January 4, 2013, decision of the Court as precluding redesignation of the Milwaukee-Racine Area to attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS at this time.

In sum, even if Wisconsin was required to address precursors for the Milwaukee-Racine Area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded PM<sub>2.5</sub> implementation rule, EPA would still conclude that the area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii) and (v).

**(iv) Maintenance Plan and Evaluation of Precursors**

A discussion of the impact of the Court's decision on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv) can be found in section IV.A.5.d., below.

**b. The Milwaukee-Racine Area Has a Fully Approved Applicable SIP under Section 110(k) of the CAA**

Upon final approval of Wisconsin's comprehensive emissions inventory, EPA will have fully approved the Wisconsin SIP for the Milwaukee-Racine Area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (See page 3 of the Calcagni memorandum; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989-990

(6th Cir. 1998); *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Wisconsin has adopted and submitted, and EPA has fully approved, provisions addressing various required SIP elements under particulate matter standards. In this action, EPA is proposing to approve Wisconsin's 2006 comprehensive emissions inventory for VOC, SO<sub>2</sub>, NO<sub>x</sub> and PM<sub>2.5</sub> as well as the 2007 supplemental inventory for ammonia for the Milwaukee-Racine Area as meeting the requirement of section 172(c)(3) of the CAA. No Milwaukee-Racine Area SIP provisions are currently disapproved, conditionally approved, or partially approved.

**3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting from Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions. (Section 107(d)(3)(E)(iii))**

EPA finds that Wisconsin has demonstrated that the observed air quality improvement in the Milwaukee-Racine Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures.

In making this showing, Wisconsin has calculated the change in emissions between 2006, one of the years in the period during which the Milwaukee-Racine Area monitored nonattainment, and 2010, one of the years in the period during which the Milwaukee-Racine Area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Milwaukee-Racine Area and upwind areas have implemented in recent years.

**a. Permanent and Enforceable Controls Implemented**

The following is a discussion of permanent and enforceable measures that have been implemented in the area:

**i. Consent Decrees**

A May 7, 2010, consent decree with Saint-Gobain Containers required the Burlington Plant, located in Burlington, Wisconsin, to install oxy-fuel technology and to be subjected to a NO<sub>x</sub> emission limit of 1.3 pounds per ton of glass produced. The facility is also subjected to an SO<sub>2</sub> emissions limit of 0.8 pounds per ton of glass produced. An August 2, 2010, consent decree requires Silgan Containers Manufacturing Plants in Menomonee Falls and Oconomowoc to reduce VOC emissions by approximately 10 tons per year (tpy) in Oconomowoc and to eliminate another 86.3 tpy of VOC emissions from their Menomonee

Falls facility.

**ii. Federal Emission Control Measures**

Reductions in fine particle precursor emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following:

*Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards.* These emission control requirements result in lower VOC, NO<sub>x</sub>, and SO<sub>2</sub> emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. The EPA has estimated that, by the time post-2009 vehicles have entirely replaced pre-2009 vehicles, the following vehicle NO<sub>x</sub> emission reductions will have occurred nationwide: passenger cars (light duty vehicles) (77 percent); light duty trucks, minivans, and sports utility vehicles (86 percent); and, larger sports utility vehicles, vans, and heavier trucks (69 to 95 percent). Some of the emissions reductions resulting from new vehicle standards occurred during the 2008-2010 attainment period; however, additional reductions will continue to occur throughout the maintenance period as new vehicles replace older vehicles. The Tier 2 standards also reduced the sulfur content of gasoline to

30 parts per million (ppm) beginning in January 2006. Gasoline sold in the region including Wisconsin prior to implementation of the Tier 2 sulfur content limits had an average sulfur content of 276 ppm<sup>12</sup>.

*Heavy-Duty Diesel Engine Rule.* This rule, which EPA issued in July 2000, limited the sulfur content of diesel fuel beginning in 2004. A second phase took effect in 2007 which reduced fine particle emissions from heavy-duty highway engines and further reduced the highway diesel fuel sulfur content to 15 ppm. The total program is estimated to achieve a 90 percent reduction in direct PM<sub>2.5</sub> emissions and a 95 percent reduction in NO<sub>x</sub> emissions for these new engines using low sulfur diesel, compared to existing engines using higher sulfur content diesel. The reductions in fuel sulfur content occurred by the 2008-2010 attainment period. Some of the emissions reductions resulting from new vehicle standards occurred during the 2008-2010 attainment period, however additional reductions will continue to occur throughout the maintenance period as the fleet of older heavy duty diesel engines turns over. The reduction in fuel sulfur content also yielded an immediate reduction in sulfate

---

<sup>12</sup> See Regulatory Impact Analysis - Control of Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements, December 1999, EPA420-R-99-023, p. IV-42.



particle emissions from all diesel vehicles.

*Nonroad Diesel Rule.* In May 2004, EPA promulgated a new rule for large nonroad diesel engines, such as those used in construction, agriculture, and mining equipment, which established engine emission standards to be phased in between 2008 and 2014. The rule also required reductions to the sulfur content in nonroad diesel fuel by over 99 percent. Prior to 2006, nonroad diesel fuel averaged approximately 3,400 ppm sulfur. This rule limited nonroad diesel sulfur content to 500 ppm by 2006, with a further reduction to 15 ppm, by 2010. The combined engine and fuel rules will reduce NO<sub>x</sub> and PM emissions from large nonroad diesel engines by over 90 percent, compared to current nonroad engines using higher sulfur content diesel. The reduction in fuel sulfur content yielded an immediate reduction in sulfate particle emissions from all diesel vehicles. In addition, some emissions reductions from the new engine emission standards were realized over the 2008-2010 time period, although most of the reductions will occur over the maintenance period as the fleet of older nonroad diesel engines turns over.

*Nonroad Large Spark-Ignition Engine and Recreational Engine Standards.* In November 2002, EPA promulgated emission standards for groups of previously unregulated nonroad engines. These

engines include large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles using spark-ignition engines such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. Emission standards from large spark-ignition engines were implemented in two tiers, with Tier 1 starting in 2004 and Tier 2 in 2007. Recreational vehicle emission standards are being phased in from 2006 through 2012. Marine Diesel engine standards were phased in from 2006 through 2009. With full implementation of all of the nonroad spark-ignition engine and recreational engine standards, an overall 72 percent reduction in VOC, 80 percent reduction in NO<sub>x</sub> and 56 percent reduction in carbon monoxide (CO) emissions are expected by 2020. Some of these emission reductions occurred by the 2008-2010 attainment period and additional emission reductions will occur during the maintenance period as the fleet turns over.

**iii. Control Measures implemented in Wisconsin and in Upwind Areas**

*CAIR and CSAPR.* EPA promulgated CSAPR (76 FR 48208, August 8, 2011), to replace CAIR, which has been in place since 2005. See 76 FR 59517. CAIR requires significant reductions in emissions of SO<sub>2</sub> and NO<sub>x</sub> from electric generating units to limit

the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. See 76 FR 70093. The D.C. Circuit initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008).

On December 30, 2011, the D.C. Circuit issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the Court stayed CSAPR pending resolution of the petitions for review of that rule in *EME Homer City* (No. 11-1302 and consolidated cases). The Court also indicated that EPA was expected to continue to administer CAIR in the interim until judicial review of CSAPR was completed.

On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR "pending the promulgation of a valid replacement." *EME Homer City*, 696 F.3d at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. EPA and other parties filed petitions for certiorari to the U.S. Supreme Court. On June 24, 2013, the Supreme Court granted certiorari and agreed to review the D.C. Circuit's decision in *EME Homer*

City. The Supreme Court's grant of certiorari, by itself, does not alter the status of CAIR or CSAPR. At this time, CAIR remains in place.

In light of these unique circumstances and for the reasons explained below, to the extent that attainment is due to emission reductions associated with CAIR, EPA is here proposing to determine that those reductions are sufficiently permanent and enforceable for purposes of CAA sections 107(d)(3)(E)(iii) and 175A. EPA therefore proposes to approve the redesignation requests and the related SIP revisions for the Milwaukee-Racine Area, including Wisconsin's plan for maintaining attainment of the PM<sub>2.5</sub> standard.

As directed by the D.C. Circuit, CAIR remains in place and enforceable until substituted by a valid replacement rule. Wisconsin submitted a CAIR SIP which was approved by EPA on October 16, 2007 (72 FR 58542). In its redesignation request, Wisconsin notes that all potential emission reductions resulting from CAIR and CSAPR have been left out of the maintenance emission inventory projections.

Although Wisconsin is not relying on CAIR in its maintenance plan, the directive from the D.C. Circuit in *EME Homer City* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA

has been ordered by the Court to develop a new rule to address interstate transport to replace CSAPR, and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. Thus, CAIR will remain in place until EPA has promulgated a final rule through a notice-and-comment rulemaking process, states have had an opportunity to draft and submit SIPs, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a FIP if appropriate. The Court's clear instruction to EPA that it must continue to administer CAIR until a valid replacement exists provides an additional backstop: by definition, any rule that replaces CAIR and meets the Court's direction would require upwind states to have SIPs that eliminate significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Further, in vacating CSAPR and requiring EPA to continue administering CAIR, the D.C. Circuit emphasized that the consequences of vacating CAIR "might be more severe now in light of the reliance interests accumulated over the intervening four years." *EME Homer City*, 696 F.3d at 38. The accumulated reliance interests include the interests of states who reasonably assumed they could rely on reductions associated with

CAIR, which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the Court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable for purposes such as redesignation. Following promulgation of the replacement rule, EPA will review SIPs as appropriate to identify whether there are any issues that need to be addressed.

**b. Emission Reductions**

Wisconsin developed annual emissions inventories for VOC, NO<sub>x</sub>, direct PM<sub>2.5</sub>, and SO<sub>2</sub> for 2006, one of the years the Milwaukee-Racine Area monitored nonattainment 2006 24-hour PM<sub>2.5</sub> standard, and 2010, one of the years the area monitored attainment of the standard. In some circumstances, seasonal inventories may be useful for the 24-hour standard. For example, in some nonattainment areas, all of the highest PM<sub>2.5</sub> concentrations occur in one season. In the case of the Milwaukee-Racine Area, Wisconsin analyzed the PM<sub>2.5</sub> monitoring

data and found that violations occurred for 24-hour average time periods during the Winter.

Therefore, it was necessary to construct emission inventories for a time period that is most associated with elevated levels of 24-hour  $PM_{2.5}$  concentrations. Within Wisconsin's redesignation request package, the state references a 2011  $PM_{2.5}$  study that evaluated the collective month-of-year profiles of average 24-hour FRM  $PM_{2.5}$  levels during 1999-2010. This assessment identified the meteorological winter months of December, January, and February as having both the highest monthly average  $PM_{2.5}$  concentrations and the highest monthly percentage of site-days with 24-hour  $PM_{2.5}$  concentrations greater than 30  $\mu g/m^3$ . Accordingly, the state designed and constructed emission inventories for their  $PM_{2.5}$  redesignation request to focus on pollution-related activity levels during the winter months (more specifically - for an average January weekday).

The emission inventories submitted by Wisconsin were developed with the assistance of the Lake Michigan Air Directors Consortium (LADCO). The main purpose of LADCO is to provide technical assessments for and assistance to its member states on problems of air quality. LADCO's primary geographic focus is the area encompassed by its member states (Illinois, Indiana, Michigan, Ohio, Minnesota and Wisconsin) and any areas which

affect air quality in its member states.

The 2006 nonattainment inventory was developed as described below. Point source emissions for 2006 were estimated using linear interpolations from 2005 to 2008 emissions inventories. The 2005 and 2008 emissions inventories were created using annually reported point source emissions, EPA's Clean Air Markets Database and approved U.S. EPA techniques for emissions calculation (e.g., emission factors). Whenever feasible, Federal, state and local controls were factored into the emission calculations. Emissions were estimated by collecting process level information from each facility that qualifies for inclusion into the state's point source database.

Area source sector emissions were created by backcasting the Wisconsin 2008 base year emissions inventory submitted to EPA in 2010 for the National Emissions Inventory. The backcasting factors were primarily based on growth factors from the Economic Growth and Analysis System model.

The 2006 nonroad mobile emission estimates were created by using EPA's National Mobile Inventory (NMIM) model (2009/05/04 Version). The 2006 aircraft, marine and rail emissions were estimated using linear interpolation from the 2005 and 2008 emissions inventories. Pechan provided marine and rail emission estimates via LADCO for Wisconsin. Pechan is an independent



contractor, which, through contracts with LADCO, has developed state-specific emission inventory data, including growth factors, for the entire LADCO region. Aircraft emissions were calculated using the Federal Aviation Administration's Emissions and Dispersion Modeling System (EDMS).

The 2006 onroad mobile emission estimates were created by using the EPA's MOVES2010a model.

The 2010 attainment year inventories were developed using the same techniques as those used to develop the nonattainment year inventories.

NO<sub>x</sub>, direct PM<sub>2.5</sub>, SO<sub>2</sub>, and VOC emissions data are shown in Table 4 below.

**Table 4. Comparison of 2006 and 2010 NO<sub>x</sub>, direct PM<sub>2.5</sub>, SO<sub>2</sub>, and VOC Emission Totals by Source Sector in Tons per Winter Day(tpwd)**

Sector	2006				2010				Net Change 2006-2010			
	PM <sub>2.5</sub>	NO <sub>x</sub>	SO <sub>2</sub>	VOC	PM <sub>2.5</sub>	NO <sub>x</sub>	SO <sub>2</sub>	VOC	PM <sub>2.5</sub>	NO <sub>x</sub>	SO <sub>2</sub>	VOC
Point	1.05	29.44	61.43	11.36	0.02	29.98	61.82	8.12	-1.03	0.54	0.39	-3.24
Area	18.62	20.05	4.56	70.58	18.89	20.40	4.53	72.27	0.27	0.35	-0.03	1.69
Nonroad	1.24	21.66	1.98	12.13	1.23	18.02	0.50	9.77	-0.01	-3.64	-1.48	-2.36
Onroad	4.62	93.10	1.49	47.56	3.45	65.71	0.47	37.24	-1.17	-27.39	-1.02	-10.32
Total	25.53	164.25	69.46	141.63	23.59	134.11	67.32	127.4	-1.94	-30.14	-2.14	-14.23

Table 4 shows that the Milwaukee-Racine Area reduced direct PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub>, and VOC emissions by 1.94 tpwd, 30.14 tpwd, 2.14 tpwd, and 14.23 tpwd, respectively, between 2006 and 2010. Based on the information summarized above, Wisconsin has

adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

On May 30, 2013, Wisconsin submitted supplemental information regarding emissions of ammonia. This information is reviewed below. Ammonia levels remain constant from the nonattainment year to the attainment year and we do not expect that to change during the maintenance period. However, EPA believes that the improvement in air quality is attributable to the PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub>, and VOC emission reductions described above and is not significantly affected by any changes in ammonia emissions.

**4. The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA. (Section 107(d)(3)(E)(iv))**

In conjunction with Wisconsin's requests to redesignate the Milwaukee-Racine Area to attainment status, Wisconsin submitted SIP revisions to provide for maintenance of 2006 24-hour PM<sub>2.5</sub> NAAQS in the area through 2025.

**a. What Is Required in a Maintenance Plan?**

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after EPA approves a redesignation to attainment. Eight years after redesignation, the state must

submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future PM<sub>2.5</sub> violations.

The September 4, 1992, John Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum states that a maintenance plan should address the following items: the attainment emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

**b. Attainment Inventory**

The Wisconsin DNR developed annual emissions inventories for NO<sub>x</sub>, direct PM<sub>2.5</sub>, and SO<sub>2</sub> for 2010, one of the years the area monitored attainment of the 2006 24-hour PM<sub>2.5</sub> standard, as described in section IV.A.3.b.. The attainment level of emissions is summarized in Table 4, above.

**c. Demonstration of Maintenance**

Along with the redesignation requests, Wisconsin submitted revisions to the Wisconsin PM<sub>2.5</sub> SIP to include maintenance plans for the Milwaukee-Racine Area, as required by section 175A of the CAA. Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area "for at least 10 years after the redesignation." EPA has interpreted this as a showing of maintenance "for a period of ten years following redesignation." Calcagni Memorandum, p. 9. Where the emissions inventory method of showing maintenance is used, its purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. Calcagni Memorandum, pp. 9-10.

As discussed in detail in the section below, Wisconsin's maintenance plan submissions expressly document that the area's emissions inventories will remain below the attainment year inventories through 2025. In addition, for the reasons set forth below, EPA believes that the state's submissions, in conjunction with additional supporting information, further demonstrate that the area will continue to maintain the PM<sub>2.5</sub> standard at least through 2025. Thus, if EPA finalizes its proposed approval of the redesignation requests and maintenance

plan in 2013, it is based on a showing, in accordance with section 175A, that the state's maintenance plan provides for maintenance for at least ten years after redesignation.

Wisconsin's plan demonstrates maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS through 2025 by showing that current and future emissions of NO<sub>x</sub>, directly emitted PM<sub>2.5</sub>, SO<sub>2</sub>, and VOC for the area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099-53100 (October 19, 2001), 68 FR 25413, 25430-25432 (May 12, 2003). As discussed below, a comparison of current and future emissions inventories for ammonia show relatively constant emissions, which further support a finding that the area will continue to maintain the standard.

For NO<sub>x</sub>, directly emitted PM<sub>2.5</sub>, SO<sub>2</sub>, and VOC, Wisconsin is using emissions inventory projections for the years 2020 and 2025 to demonstrate maintenance. The projected emissions were estimated by the WDNR, with assistance from LADCO. As discussed in section IV.A.4.a., above, many of the control programs that helped to bring the area into attainment of the standard will continue to achieve additional emission reductions over the maintenance period. These control programs include Tier 2

emission standards for vehicles and gasoline sulfur standards, the heavy-duty diesel engine rule, the nonroad diesel rule, and the nonroad large spark-ignition engine and recreation engine standards. Emissions data for all sources by source sector are shown in Tables 5 through 7, below.

**Table 5: Comparison of 2006, 2010, 2020, and 2025 NO<sub>x</sub> Emission Totals by Source Sector (tpwd) for the Milwaukee-Racine Area**

Sector	NO <sub>x</sub>				
	2006	2010	2020	2025	Net Change 2010-2025
Point	29.44	29.98	23.94	19.97	-10.017
Area	20.05	20.40	18.20	17.87	-2.53
Nonroad	21.66	18.02	7.57	5.65	-12.37
Onroad <sup>14</sup>	93.10	65.71	32.62	28.69	-37.02
Total	164.25	134.11	82.33	72.18	-61.93

**Table 6: Comparison of 2006, 2010, 2020, and 2025 Direct PM<sub>2.5</sub> Emission Totals by Source Sector (tpwd) for the Milwaukee-Racine Area**

Sector	Direct PM <sub>2.5</sub>				
	2006	2010	2020	2025	Net Change 2010-2025
Point <sup>13</sup>	1.05	0.02	0.32	0.44	0.42
Area	18.62	18.89	17.39	17.20	-1.69
Nonroad	1.24	1.23	0.64	0.50	-0.73
Onroad <sup>14</sup>	4.62	3.45	2.33	2.16	-1.29

<sup>13</sup> Includes Electric generating units

<sup>14</sup> Emissions projections for the onroad sector were generated using the MOVES model. Wisconsin submitted the MOVES based NO<sub>x</sub> and direct PM<sub>2.5</sub> emissions projections and MVEBs for the onroad sector on January 17, 2013, to replace the MOBILE6.2 based onroad emissions projections and MVEBs submitted as part of the maintenance plan.

<b>Total</b>	25.53	23.59	20.68	20.30	-3.29
--------------	-------	-------	-------	-------	-------

**Table 7: Comparison of 2006, 2010, 2020, and 2025 SO<sub>2</sub> Emission Totals by Source Sector (tpwd) for the Milwaukee-Racine Area**

<b>Sector</b>	<b>SO<sub>2</sub></b>				
	<b>2006</b>	<b>2010</b>	<b>2020</b>	<b>2025</b>	<b>Net Change 2010-2025</b>
<b>Point</b>	61.43	61.82	27.84	10.45	-51.37
<b>Area</b>	4.56	4.53	3.88	3.68	-0.85
<b>Nonroad</b>	1.98	0.50	0.39	0.37	-0.13
<b>Onroad<sup>15</sup></b>	1.49	0.47	0.39	0.38	-0.09
<b>Total</b>	69.46	67.32	32.50	14.88	-52.44

**Table 8: Comparison of 2006, 2010, 2020, and 2025 VOC Emission Totals by Source Sector (tpwd) for the Milwaukee-Racine Area**

<b>Sector</b>	<b>NO<sub>x</sub></b>				
	<b>2006</b>	<b>2010</b>	<b>2020</b>	<b>2025</b>	<b>Net Change 2010-2025</b>
<b>Point</b>	11.36	8.12	10.31	11.40	3.28
<b>Area</b>	70.58	72.27	71.70	75.05	2.78
<b>Nonroad</b>	12.13	9.77	7.91	8.27	-1.50
<b>Onroad<sup>14</sup></b>	47.56	37.24	15.89	11.98	-25.26
<b>Total</b>	141.63	127.40	105.81	106.70	-20.70

Tables 5-8 show that emissions of NO<sub>x</sub>, direct PM<sub>2.5</sub>, SO<sub>2</sub>, and VOC, are projected to decrease by 92.07 tpwd, 2.46 tpwd, 54.58 tpwd, and 20.70 tpwd respectively, between 2010 and 2025.

Furthermore, fleet turnover in onroad and nonroad vehicles that

---

<sup>15</sup> Onroad sector emissions were projected using the MOBILE6.2 emissions model.

will continue to occur after 2025 will continue to provide additional significant emission reductions.

In addition, as Tables 1 and 2 demonstrate, monitored PM<sub>2.5</sub> design value concentrations in the Milwaukee-Racine Area are well below the NAAQS in the years beyond 2010, an attainment year for the area. Further, those values are trending downward as time progresses. Based on the future projections of emissions in 2015 and 2025 showing significant emissions reductions in direct PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub>, and VOC, it is very unlikely that monitored PM<sub>2.5</sub> values in 2025 and beyond will show violations of the NAAQS. Additionally, the 2010-2012 design value of 29 µg/m<sup>3</sup> for 24-hour standard provides a sufficient margin in the unlikely event emissions rise slightly in the future.

Based on the information summarized above, Wisconsin has adequately demonstrated maintenance of the PM<sub>2.5</sub> standard for a period extending ten years from the date that EPA may be expected to complete rulemaking on the state's redesignation request.

#### **d. Maintenance Plan and Evaluation of Precursors**

With regard to the redesignation of the Milwaukee-Racine nonattainment Area, in evaluating the effect of the Court's remand of EPA's implementation rule, which included presumptions



against consideration of VOC and ammonia as PM<sub>2.5</sub> precursors, EPA in this proposal is also considering the impact of the decision on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv). To begin with, EPA notes that the area has attained the 2006 PM<sub>2.5</sub> standard and that the state has shown that attainment of that standard is due to permanent and enforceable emission reductions.

EPA finds that the state's maintenance plan shows continued maintenance of the standard by tracking the levels of the precursors whose control brought about attainment of the 2006 24-hour PM<sub>2.5</sub> standard in the Milwaukee-Racine Area, NO<sub>x</sub>, direct PM<sub>2.5</sub>, SO<sub>2</sub>, and VOC. EPA therefore believes that the only additional consideration related to the maintenance plan requirements that results from the Court's January 4, 2013, decision is that of assessing the potential role of ammonia in demonstrating continued maintenance in this area. As explained below, based upon documentation provided by the state and supporting information, EPA believes that the maintenance plan for the Milwaukee-Racine Area need not include any additional emission reductions of ammonia in order to provide for continued maintenance of the standard.

Total ammonia emissions throughout the Milwaukee-Racine Area are very low, estimated to be less than 2,400 tons per

year. See Table 9 below. This amount of ammonia emissions is small in comparison to the total amounts of SO<sub>2</sub>, NO<sub>x</sub>, VOC, and even direct PM<sub>2.5</sub> emissions from sources in the area. Moreover, as described below, available information shows that no precursor, including ammonia, is expected to increase over the maintenance period so as to interfere with or undermine the state's maintenance demonstration.

Wisconsin's maintenance plan shows that emissions of direct PM<sub>2.5</sub>, SO<sub>2</sub>, NO<sub>x</sub>, and VOC are projected to decrease by 5.23 tpwd, 54.58 tpwd, 92.07 tpwd, and 20.70 tpwd, respectively, over the maintenance period. See Tables 5-8 above. In addition, emissions inventories used in the regulatory impact analysis (RIA) for the 2012 PM<sub>2.5</sub> NAAQS show that ammonia emissions are projected to decrease by 65 tpy between 2007 and 2020. See Table 9 below. While the RIA emissions inventories are only projected out to 2020, there is no reason to believe that this downward trend would not continue through 2025. Given that the Milwaukee-Racine Area is already attaining the 2006 24-hour PM<sub>2.5</sub> NAAQS even with the current level of emissions from sources in the area, the downward trend of emissions inventories would be consistent with continued attainment. Indeed, projected emissions reductions for the precursors that the state is addressing for purposes of the 2006 24-hour PM<sub>2.5</sub> NAAQS indicate

that the area should continue to attain the NAAQS following the precursor control strategy that the state has already elected to pursue. Even if ammonia emissions were to increase unexpectedly between 2020 and 2025, the overall emissions reductions projected in direct PM<sub>2.5</sub>, SO<sub>2</sub>, NO<sub>x</sub>, and VOC would be sufficient to offset any increases. For these reasons, EPA believes that local emissions of all of the potential PM<sub>2.5</sub> precursors will not increase to the extent that they will cause monitored PM<sub>2.5</sub> levels to violate the 2006 PM<sub>2.5</sub> NAAQS during the maintenance period.

**Table 9: Comparison of 2007 and 2020 Ammonia Emission Totals by Source Sector (tpwd) for the Milwaukee-Racine Area<sup>16</sup>**

<b>Sector</b>	<b>2007</b>	<b>2020</b>	<b>Net Change 2007- 2020</b>
<b>Point</b>	33	149	116
<b>Area</b>	1,848	1,885	37
<b>Nonroad</b>	8	10	1
<b>Onroad</b>	529	309	-219
<b>Fires</b>	5	5	0
<b>Total</b>	2,423	2,358	-65

In addition, available air quality modeling analyses show continued maintenance of the standard during the maintenance period.

---

<sup>16</sup> These emissions estimates were taken from the emissions inventories developed for the RIA for the 2012 PM<sub>2.5</sub> NAAQS

Wisconsin modeling using Round 5 emission files from LADCO updated "Modeled Attainment Test Software (MATS - October 2012)" from EPA, was completed in March, 2013. The predicted 2018 design value is 33  $\mu\text{g}/\text{m}^3$ , below the 2006 24-hour  $\text{PM}_{2.5}$  NAAQS. Future utility fuel projections could be updated, likely resulting in even lower  $\text{PM}_{2.5}$  design values.

Thus, EPA believes that there is ample justification to conclude that the Milwaukee-Racine Area should be redesignated, even taking into consideration the emissions of other precursors potentially relevant to  $\text{PM}_{2.5}$ . After consideration of the D.C. Circuit's January 4, 2013, decision, and for the reasons set forth in this notice, EPA proposes to approve the state's maintenance plan and its request to redesignate the Milwaukee-Racine Area to attainment for the 2006 24-hour  $\text{PM}_{2.5}$  standard.

**e. Monitoring Network**

Wisconsin currently operates five monitors for purposes of determining attainment with the 2006 24-hour  $\text{PM}_{2.5}$  standard in the Milwaukee-Racine Area. Wisconsin has committed to continue to operate and maintain these monitors and will consult with EPA prior to making any changes to the existing monitoring network. WDNR remains obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the AQS in accordance with Federal guidelines.

**f. Verification of Continued Attainment**

Continued attainment of the PM<sub>2.5</sub> NAAQS in the Milwaukee-Racine Area depends, in part, on the state's efforts toward tracking indicators of continued attainment during the maintenance period. Wisconsin's plan for verifying continued attainment of the 24-hour PM<sub>2.5</sub> standard in the Milwaukee-Racine Area consists of continued ambient PM<sub>2.5</sub> monitoring in accordance with the requirements of 40 CFR part 58. Wisconsin DNR will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (codified at 40 CFR 51 subpart A) to track future levels of emissions.

**g. Contingency Plan**

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also

identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Wisconsin has adopted a contingency plan for the Milwaukee-Racine Area to address possible future 24-hour PM<sub>2.5</sub> air quality problems. Under Wisconsin's plan, if a violation of the 2006 24-hour PM<sub>2.5</sub> standard occurs, WDNR will evaluate existing but not fully implemented, forthcoming, and, if necessary, new control measures to correct the violation of the standard within 18 months. Wisconsin has confirmed EPA's interpretation that this commitment means that the measure will be adopted and implemented within 18 months of the triggering event. In addition, it is EPA's understanding that to acceptably address a violation of the standard, existing and forthcoming control measures must be in excess of emissions reductions included in the projected maintenance inventories. Wisconsin's potential candidate contingency measures include the following:

- i. Broaden the application of the NO<sub>x</sub> RACT program to include a larger geographic area, and/or include

sources with potential emissions of 50 tpy, and/or increase the cost effectiveness thresholds utilized as a basis for Wisconsin's NO<sub>x</sub> RACT Program.;

- ii. Consideration of PM<sub>2.5</sub> and SO<sub>2</sub> RACT;
- iii. Diesel reduction emissions strategies;
- iv. Ammonia emission reduction strategies.

EPA believes that Wisconsin's contingency plan satisfies the pertinent requirements of section 175A(d).

#### **h. Provisions for Future Updates of the 24-hour PM<sub>2.5</sub>**

##### **Maintenance Plan**

As required by section 175A(b) of the CAA, Wisconsin commits to submit to EPA an updated maintenance plan eight years after redesignation of the Milwaukee-Racine Area to attainment of the 2006 24-hour PM<sub>2.5</sub> standard to cover an additional ten-year period beyond the initial ten year maintenance period. As required by section 175A of the CAA, Wisconsin has committed to retain the control measures contained in the SIP prior to redesignation, and to submit to EPA for approval as a SIP revision, any changes to its rules or emission limits applicable to SO<sub>2</sub>, NO<sub>x</sub>, or direct PM<sub>2.5</sub> sources as required for maintenance of the 2006 24-hour PM<sub>2.5</sub> standard in the Milwaukee-Racine Area.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan.

#### **B. Comprehensive Emissions Inventories**

As discussed above in section IV.A.2.a.ii., section 173(c)(3) of the CAA requires areas to submit a comprehensive, accurate and current emissions inventory. As part of the redesignation request, Wisconsin submitted 2006 and 2010 emissions inventories for NO<sub>x</sub>, direct PM<sub>2.5</sub> and SO<sub>2</sub>, and VOC. These emissions inventories are discussed in section IV.A.3.b., above, and the data are shown in Table 4.

On May 30, 2013, WDNR supplemented its submittal with a 2007/2008 emissions inventory for ammonia. The additional emissions inventory information provided by the state addresses emissions of ammonia from the general source categories of point sources, area sources, onroad mobile sources, and nonroad mobile sources. The state-submitted emissions inventories were based upon information generated by LADCO in conjunction with its member states and are presented in Table 10 below.

LADCO ran the EMS model using data provided by the state of Wisconsin to generate point source emissions estimates. The



point source data supplied by the state was obtained from Wisconsin's source facility emissions reporting.

For area sources, LADCO ran the EMS model using the 2008 National Emissions Inventory (NEI) data provided by Wisconsin. LADCO followed Eastern Regional Technical Advisory Committee (ERTAC) recommendations on area sources when preparing the data. Agricultural ammonia emissions were not taken from NEI; instead emissions were based on Carnegie Mellon University's Ammonia Emission Inventory for the Continental United States (CMU). Specifically, the CMU 2002 annual emissions were grown to reflect 2007 conditions. A process-based ammonia emissions model developed for LADCO was then used to develop temporal factors to reflect the impact of average meteorology on livestock emissions.

Nonroad mobile source emissions were generated using the NMIM2008 emissions model. LADCO also accounted for three other nonroad categories not covered by the NMIM model: commercial marine vessels, aircraft, and railroads. Marine emissions were based on reports prepared by Environ entitled "LADCO Nonroad Emissions Inventory Project for Locomotive, Commercial Marine, and Recreational Marine Emission Sources, Final Report, December 2004" and "LADCO 2005 Commercial Marine Emissions, Draft, March 2, 2007." Aircraft emissions were provided by Wisconsin and

calculated using AP-42 emission factors and landing and take-off data provided by the Federal Aviation Administration. Rail emissions were based on the 2008 inventory developed by ERTAC.

Onroad mobile source emissions were generated using EPA's MOVES2010a emissions model.

EPA notes that the emissions inventory developed by LADCO is documented in "Regional Air Quality Analyses for Ozone, PM<sub>2.5</sub>, and Regional Haze: Base C Emissions Inventory" (September 12, 2011).

**Table 10. Milwaukee-Racine Area Ammonia Emissions (tpwd) for 2007/2008 by Source Sector**

Sector	Ammonia
Point	0.08
Area	4.51
Nonroad	0.01
Onroad	1.78
Total	6.38

EPA has concluded that the 2007/2008 ammonia emissions inventory provided by the state is complete and as accurate as possible given the input data available for the relevant source categories. EPA also believes that the inventory provides information about ammonia as a PM<sub>2.5</sub> precursor in the context of evaluating redesignation of the Milwaukee-Racine Area under subpart 4. Therefore, we are proposing to approve the ammonia

emissions inventory submitted by the state, in conjunction with the NO<sub>x</sub>, direct PM<sub>2.5</sub>, SO<sub>2</sub>, and VOC emissions inventories, as fully meeting the comprehensive inventory requirement of section 172(c)(3) of the CAA for the Milwaukee-Racine Area for the 2006 24-hour PM<sub>2.5</sub> standard.

### **C. Wisconsin's MVEBs**

#### **1. How Are MVEBs Developed?**

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and maintenance plans for PM<sub>2.5</sub> nonattainment areas and for areas seeking redesignations to attainment of the PM<sub>2.5</sub> standard. These emission control strategy SIP revisions (e.g., RFP and attainment demonstration SIP revisions) and maintenance plans create MVEBs based on onroad mobile source emissions for criteria pollutants and/or their precursors to address pollution from onroad transportation sources. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment, RFP or maintenance, as applicable.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept

is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188).

Under section 176(c) of the CAA, transportation plans and transportation improvement programs (TIPs) must be evaluated to determine if they conform with the area's SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS or any required interim milestone. If a transportation plan or TIP does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find "adequate" or approve for use in determining transportation conformity before the MVEBs can be used. Once EPA affirmatively approves or finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs must be used by state and Federal agencies in determining whether transportation plans and TIPs conform to the SIP as required by section 176(c) of the CAA. EPA's substantive

criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4). Additionally, to approve a motor vehicle emissions budget EPA must complete a thorough review of the SIP, in this case the PM<sub>2.5</sub> maintenance plan, and conclude that the SIP will achieve its overall purpose, in this case providing for maintenance of the 2006 24-hour PM<sub>2.5</sub> standard.

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) EPA taking action on the MVEB. The process for determining the adequacy of submitted SIP MVEBs is codified at 40 CFR 93.118.

## **2. What Are the MVEBs for the Milwaukee-Racine Area?**

The maintenance plan submitted by Wisconsin for the Milwaukee-Racine Area contains direct PM<sub>2.5</sub>, SO<sub>2</sub>, VOC, and NO<sub>x</sub> MVEBs for the area for the years 2020 and 2025. The 2020 and 2025 MVEBs are set forth in Table 11 below.

**Table 11: MVEBs for the Milwaukee-Racine Area for 2020 and 2025.**

	NO <sub>x</sub>	PM <sub>2.5</sub>	SO <sub>2</sub>	VOC
<b>2020</b>	32.62	2.33	0.39	15.89
<b>2025</b>	28.69	2.16	0.38	11.98

Wisconsin did not provide emission budgets for ammonia because it concluded, consistent with the presumptions regarding these precursors in the conformity rule at 40 CFR

93.102(b)(2)(v), which predated and was not disturbed by the litigation on the PM<sub>2.5</sub> implementation rule, that emissions of these precursors from motor vehicles are not significant contributors to the area's PM<sub>2.5</sub> air quality problem.

EPA issued conformity regulations to implement the 1997 PM<sub>2.5</sub> NAAQS in July 2004 and May 2005 (69 FR 40004, July 1, 2004, and 70 FR 24280, May 6, 2005, respectively). Those actions were not part of the final rule recently remanded to EPA by the D.C. Circuit in *NRDC v. EPA*, No. 08-1250 (Jan. 4, 2013), in which the Court remanded to EPA the implementation rule for the PM<sub>2.5</sub> NAAQS because it concluded that EPA must implement that NAAQS pursuant to the PM-specific implementation provisions of subpart 4 of part D of title I of the CAA, rather than solely under the general provisions of subpart 1. That decision does not affect EPA's proposed approval of the Milwaukee-Racine Area MVEBs.

First, as noted above, EPA's conformity rule implementing the 1997 PM<sub>2.5</sub> NAAQS was a separate action from the overall PM<sub>2.5</sub> implementation rule addressed by the Court and was not considered or disturbed by the decision. In addition, the state's maintenance plan shows continued maintenance through 2025 by demonstrating that NO<sub>x</sub>, SO<sub>2</sub>, VOC, and direct PM<sub>2.5</sub> emissions will continue to decrease through the maintenance period. For ammonia, RIA inventories for 2007 and 2020 show

that both onroad and total emissions are expected to decrease, supporting the state's conclusion, consistent with the presumptions regarding this precursor in the conformity rule, that emissions of ammonia from motor vehicles are not a significant contributor to the area's PM<sub>2.5</sub> air quality problem and that MVEBs for this precursor are unnecessary.

EPA has reviewed the submitted budgets for 2015 and 2025, using the conformity rule's adequacy criteria found at 40 CFR 93.118(e)(4). EPA finds that the area can maintain attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS for the relevant maintenance period with onroad mobile source emissions at the levels of the MVEBs since total emissions will still remain under attainment year emission levels. EPA therefore finds adequate and proposes to approve the MVEBs submitted by Wisconsin for use in determining transportation conformity in the Milwaukee-Racine Area.

## **V. Summary of Proposed Actions**

EPA is proposing to determine that the Milwaukee-Racine Area is attaining the 2006 24-hour PM<sub>2.5</sub> standard and that the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve the request from WDNR to change the legal designation of the Milwaukee-Racine Area from nonattainment to attainment for the

2006 24-hour PM<sub>2.5</sub> standard. EPA is proposing to approve Wisconsin's PM<sub>2.5</sub> maintenance plan for the Milwaukee-Racine Area as a revision to the Wisconsin SIP because the plan meets the requirements of section 175A of the CAA. EPA is proposing to approve 2006 and 2010 emissions inventories for direct PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub>, and VOC, and 2007/2008 emissions inventory for ammonia as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Finally, EPA finds adequate and is proposing to approve the 2020 and 2025 NO<sub>x</sub>, direct PM<sub>2.5</sub>, SO<sub>2</sub>, and VOC MVEBs for the Milwaukee-Racine area. These MVEBs will be used in future transportation conformity analyses for the area.

## **VI. Statutory and Executive Order Reviews**

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the



provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions do not impose additional requirements beyond those imposed by state law and the CAA. For that reason, these proposed actions:

- are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because a determination of attainment is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of Fine Particulate national ambient air quality standards in tribal lands.

**List of Subjects**

**40 CFR Part 52**

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Particulate matter.

**40 CFR Part 81**

Environmental protection, Air pollution control, National parks,  
Wilderness areas.

Dated: January 30, 2014.

Susan Hedman,  
Regional Administrator, Region 5.

[FR Doc. 2014-03314 Filed 02/14/2014 at 8:45 am; Publication  
Date: 02/18/2014]